

REMARKS

Claim 19 has been amended consistent with the wording in the parent application and to set forth the metes and bounds of the invention more precisely. Support for the amendment is found on page 5 at lines 7-12. No new matter has been added and entry of the amendment is respectfully requested.

In addition, claims 45-47 have been canceled as being directed to a non-elected invention. Claim 35 has been retained because of its status as a method to use the formulation of claim 19 and applicant believes it proper to rejoin this claim should the composition claims be found allowable. It is believed that the claims as amended are clearly patentable over the art.

The Art Rejections

Claims 19-29, 31 and 33 were rejected as assertedly obvious over Marschner, *et al.*, (US 3,705,855). The reversible emulsion aerosol systems of Marschner clearly do not meet the claim limitation that the compositions be pesticidal, nor do they meet the limitation that the formulation have a turbidity less than 3 NTU nor the limitation that the active ingredients "consist essentially of" the named components. It would appear that the emulsions of Marschner are exactly that – that they would have considerable turbidity. They are designed to be propellants, and thus contain ingredients that fall outside the requirement that the formulation "consists essentially of" the components in the formulations of the present claims. Indeed, all of the illustrated emulsions that contain sorbitan trioleate ethoxylate contain dichlorofluoromethane. There is no suggestion in Marschner that a clear aqueous formulation containing sorbitan trioleate ethoxylate be prepared as a pesticide or for any other reason.

Accordingly, the rejection over Marschner may properly be withdrawn.

Claims 19-29, 31 and 33 were rejected as assertedly unpatentable over Varadaraj, *et al.* (US 5,514,588) in view of Schnee, *et al.* (US 4,521,552). According to the Office, Varadaraj teaches sorbitan trioleate ethoxylate compositions that can include anionic surfactants. Schnee is cited as teaching that sorbitan trioleate ethoxylates are commonly used in emulsions. The Office asserts that it would have been obvious to use the emulsion of Schnee in the compositions of Varadaraj because Schnee makes it clear that aqueous solutions containing emulsions are used as sedimentation aids.

Maybe so, but the claims as amended clearly distinguish these documents even if they are combined. Varadaraj requires compounds of a specified structure clearly not found in the presently claimed formulation which “consists essentially of” the components listed. The emulsions of Schnee require the inclusion of water-soluble polymers of high molecular weights, not present in the presently claimed compositions. Neither document alone, nor the documents taken together, suggest preparation of a clear aqueous formulation of turbidity less than 3 NTU, much less the preparation of a pesticide.

Applicant recognizes that the compositions in all of the cited documents may incidentally be pesticidal, but the requirement that the formulations of the claims be pesticidal speaks to motivation to modify the documents to prepare the claimed invention compositions. Thus, the pesticidal nature of the composition is indeed relevant to an analysis of whether modifications of the prior art compositions are suggested. There is nothing in the prior art that suggests any method to make pesticidal compositions of any kind.

Summary

It is believed that the claims as amended are free of the cited prior art. Passage of claims 19-29 and 35 to issue is therefore respectfully requested. If questions remain that might be resolved by a discussion with the undersigned, a telephone call at the number listed below is respectfully requested.

In the unlikely event that the transmittal letter is separated from this document and the Patent Office determines that an extension and/or other relief is required, applicant petitions for any required relief including extensions of time and authorize the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to Deposit Account No. 03-1952 referencing docket No. 437472000210.

Respectfully submitted,

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